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Supreme Court of the United States

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OCTOBER TERM—1951, No. 431

JAN 5 1952

In the Matter of the Application of
TESSIM ZORACH and ESTA GLUCK,
Petitioners-Appellants,

CHARLES ELMORE CROPLEY
CLERK

for an order Pursuant to Article 78 of
the Civil Practice Act,

against

ANDREW G. CLAUSON, JR., MAXIMILIAN MOSS, ANTHONY CAMPAGNA, HAROLD C. DEAN, GEORGE A. TIMONE and JAMES MARSHALL, constituting the Board of Education of the City of New York, and FRANCIS T. SPAULDING, Commissioner of Education of the State of New York,
Respondents,

directing them to discontinue certain school practices,

and against

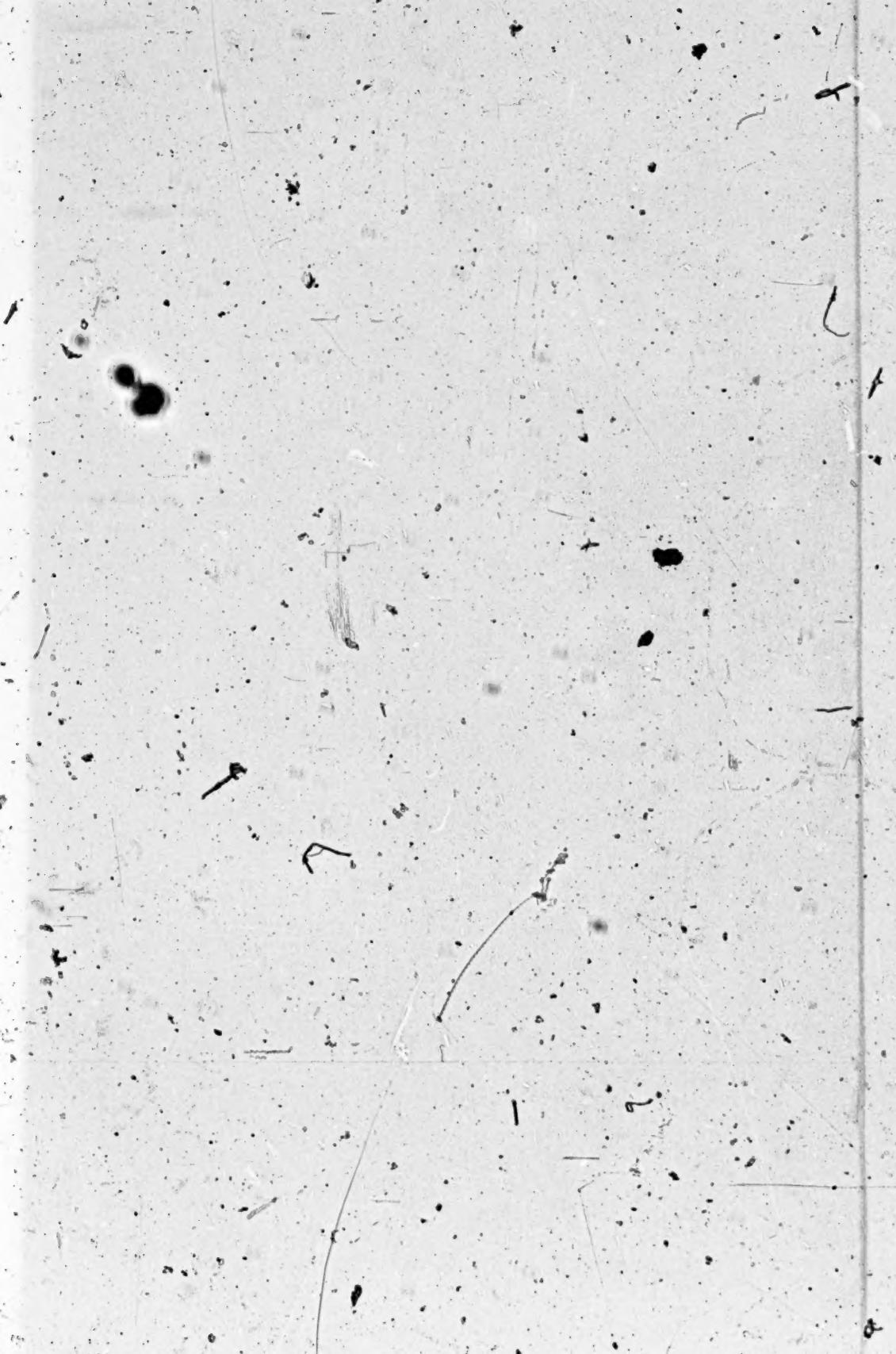
THE GREATER NEW YORK COORDINATING COMMITTEE ON RELEASED TIME OF JEWS, PROTESTANTS and ROMAN CATHOLICS,

Intervenor-Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE BY NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA

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To THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now COME ORRIN G. JUDD and ROBERT McC. MARSH, Esqs., on behalf of National Council of Churches of Christ in the United States of America, and respectfully move

this Court, pursuant to Rule 27, Paragraph 9, of the Rules of this Court, for leave to file a brief in this case, as *amicus curiae*.

The consent of the attorneys for Petitioners-Appellants to file such a brief was requested but refused; the attorneys for all other parties have stated that they would consent to the filing of such a brief.

The interest of the National Council and its reasons for asking leave to file a brief *amicus curiae* are set forth below.

The National Council of the Churches of Christ in the United States of America is a New York corporation, incorporated under the Membership Corporations Law of the State of New York. The religious denominations which participated in creating the National Council are the following twenty-nine, having about 32,000,000 members in the United States:

- African Methodist Episcopal Church
- African Methodist Episcopal Zion Church
- American Baptist Convention
- Augustana Lutheran Church
- Church of the Brethren
- Colored Methodist Episcopal Church
- Congregational-Christian Churches
- Disciples of Christ
- Danish Evangelical Lutheran Church
- Evangelical and Reformed Church
- Evangelical United Brethren Church
- Evangelical Unity of Czech Moravian Brethren in N. A.
- Friends-Five Year Meeting
- Friends of Philadelphia Vicinity

- Methodist Church
- Moravian Church (Northern and Southern Provinces)
- National Baptist Convention of America
- National Baptist Convention, U. S. A., Inc.
- Presbyterian Church in the U. S.
- Presbyterian Church in the U. S. A.
- Protestant Episcopal Church
- Reformed Church in America
- Roumanian Orthodox Episcopate of America
- Russian Orthodox Church in America
- Seventh Day Baptists, General Conference
- Syrian Antiochian Orthodox Church
- Ukrainian Orthodox Church of America
- United Lutheran Church in America
- United Presbyterian Church of N. A.

In addition, the Greek Orthodox Church, with 2,000,000 communicants, was recently admitted to membership.

One of the express purposes of the incorporation of the National Council was to continue and extend the work of the following pre-existing organizations:

- Federal Council of the Churches of Christ in America
- Foreign Missions Conference of North America
- Home Missions Council of North America
- International Council of Religious Education
- Missionary Education Movement of the United States and Canada
- National Protestant Council on Higher Education
- United Council of Church Women
- United Stewardship Council

The National Council constitutes the major organ for cooperative work of the principal Protestant denomina-

tions in the United States. Created in 1950, by a merger of the above-listed separate interdenominational agencies, it carries on the functions and work of the International Council of Religious Education, which has been in the forefront of the national movement for religious education on released time since its inception.

As the single nation-wide co-operative agency of the major Protestant denominations, the National Council is directly affected by and seriously concerned with the attempt made by Appellants in this case to terminate a program which one of its predecessors has sponsored for years. The International Council of Religious Education, the particular predecessor involved, was incorporated by Act of Congress in 1907 under the name, International Sunday School Association of America. As the official cooperative agency of forty denominational Boards of Christian Education and thirty-three State Councils of Churches, it was actively identified with the released time movement.

Released-time religious education represents a plan under which children who attend public schools can be given an opportunity for religious instruction, without any preference by the state in favor of one faith over another and without using school premises or other public property for such instruction. The growing secularization of education in publicly-supported schools has resulted in the gradual elimination of the religious element which was once an important part of all education.

It is believed that none of the parties to this action are in a position adequately to present the views, interests and work of the several Protestant denominations which, through their national agency, the National Council of the Churches of Christ in the United States of America, and its predecessor organization, have fostered and developed a program of released-time week-day religious

education, which now involves almost 2,000,000 pupils, located in almost every one of the forty-eight states.

In any controversy centering about the principle of separation of Church and State—a principle which has been traditionally espoused by the Protestant denominations here represented in the National Council—the considered judgment of that national agency as to what constitutes violation of the constitutional provision prohibiting laws respecting the establishment of a religion, should have weight. Protestant agencies have made studies of the relation between religion and education, which are definitely relevant to the disposition of this case, and which we believe will not be covered by the briefs of either the governmental respondents or the inter-faith organization which is an intervenor in the proceeding.

The resolution to seek leave to file a brief as *amicus* in this Court was adopted at a meeting of the General Board of the National Council, which consists of 125 members, selected by the constituent denominations.

The brief for the National Council will be in galley form so that it can be filed within a very few days after counsel are notified of the decision by this Court, granting leave to file such a brief.

The Court of Appeals of New York granted the National Council leave to file a brief as *amicus curiae* when this case was before that Court.

WHEREFORE, the Court is respectfully requested to grant the motion for leave to file a brief *amicus curiae*.

Dated: New York, N. Y.
January 4, 1952.

Respectfully submitted,

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